

**Commonwealth of Kentucky  
Workers' Compensation Board**

**OPINION ENTERED: July 26, 2013**

CLAIM NO. 201200499 & 201176183

ASI PLUMBING, AS INSURED BY KEMI

PETITIONER

VS.

**APPEAL FROM HON. J. LANDON OVERFIELD,  
CHIEF ADMINISTRATIVE LAW JUDGE**

KASEY WEBB  
and J. LANDON OVERFIELD,  
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION AND ORDER  
VACATING, REMANDING  
AND DISMISSING**

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

**ALVEY, Chairman.** ASI Plumbing, as insured by KEMI ("ASI") seeks review of an order entered May 17, 2013 by Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") granting Kasey Webb's ("Webb") motion for reconsideration and setting aside the previous order entered April 18, 2013. In the May 17, 2013 order, the CALJ remanded the

claim to Hon. John B. Coleman, Administrative Law Judge ("ALJ"), for consideration of issues reserved in the settlement agreement approved December 18, 2012.

ASI filed an appeal of the CALJ's May 17, 2013 order. Webb filed a motion to dismiss the appeal on June 18, 2013, arguing ASI failed to file a petition for reconsideration of the May 17, 2013 order, and the appeal is taken from an interlocutory order. On June 24, 2013, ASI filed a response to the motion to dismiss the appeal. Because the CALJ exceeded his authority, we vacate the May 17, 2013 order, remand for a determination consistent with the views expressed herein, and dismiss the appeal.

A brief review of the history of the underlying claims is necessary. On January 17, 2012, Webb filed a Form 101 alleging an injury to his middle and low back, and left leg pain radiating to his toes when he was jackhammering a concrete floor on September 1, 2011. The claim was assigned to Hon. Douglas W. Gott, Administrative Law Judge ("ALJ Gott"), with claim number 2011-76183. Subsequently, on April 19, 2012, Webb filed a Form 101 alleging an injury to his middle and lower back and hip in a motor vehicle accident while working for ASI on April 22, 2010. On May 21, 2012, an order was issued consolidating

the claims, and assigning both to be decided by the ALJ. ALJ Gott had no further involvement.

A benefit review conference ("BRC") was held on September 6, 2012. The BRC order and memorandum reflects the issues to be decided included benefits per KRS 342.730; work-relatedness/causation; unpaid/contested medical expenses; injury as defined by the Act; temporary total disability ("TTD"); and apportionment between the injuries. A hearing was held November 13, 2012. At the hearing, the parties listed as additional contested issues credit for unemployment benefits and credit for a third party claim.

On December 18, 2012, the ALJ approved a Form 110-I settlement agreement. The terms of the agreement included a lump sum payment of \$21,302.60 of which \$7,500.00 represented settlement of past and present TTD benefits. The remaining \$13,802.60 represented a settlement of permanent partial disability benefits based upon a 5% impairment rating, subject to the applicable factor pursuant to KRS 342.730(1)(b), and the two multiplier pursuant to KRS 342.730(1)(c)2. The parties reserved for resolution by the ALJ the issues of causation/work-relatedness, occurrence of an injury as defined by KRS 342.0011(1), entitlement to additional TTD benefits after the date of the settlement agreement, reasonableness and

necessity of additional medical care, future medical benefits, and apportionment of liability.

In the decision rendered January 11, 2013, the ALJ determined ASI, as insured by KESA, was responsible for medical benefits from September 1, 2011 through April 9, 2012. He determined ASI, as insured by KEMI, was responsible thereafter for "all reasonable and necessary medical expenses for the cure and/or relief of the plaintiff's lower back injury pursuant to KRS 342.020." No petition for reconsideration was filed, nor was the decision appealed.

On March 20, 2013, Webb filed a motion for interlocutory relief and payment of TTD benefits. ASI responded, arguing the ALJ no longer had jurisdiction of the claim, and a motion to reopen was required. On April 15, 2013, Webb filed a reply to ASI's response, and in the alternative, a motion to reopen the claim pursuant to KRS 342.125(1)(d).

On April 18, 2013, the CALJ entered an order overruling the motion for interlocutory relief, sustained the motion for leave to file a reply, passed the motion to reopen, and granted Webb twenty days to supplement the motion to reopen with proper documentation. On April 30, 2013, Webb filed a motion for reconsideration of the April

18, 2013 order denying interlocutory relief. On May 17, 2013, the CALJ granted Webb's petition for reconsideration, set aside the April 18, 2013 order, and remanded the claim to the ALJ, "for further consideration of the issues reserved in the settlement agreement of December 18, 2012." In doing so, the CALJ exceeded his authority.

The settlement agreement clearly reflects the parties settled all pending requests for TTD benefits. The ALJ then issued the opinion and order forthwith. Despite the blanket issue of future TTD benefits reserved in the settlement agreement, Webb presented no evidence of entitlement to additional TTD benefits until more than sixty days after the ALJ issued his decision. The subject of prospective TTD benefits at some remote time in the future was not one which could properly be determined by the ALJ when the decision was rendered. Likewise, the ALJ did not state his opinion was interlocutory in nature, nor did he indicate any remaining issue to be decided.

Since no reconsideration of the opinion was requested, and no appeal was filed, ASI is correct the ALJ no longer retained jurisdiction of the claim. In order to pursue additional TTD benefits, it was incumbent upon Webb to file a motion to reopen. This was not done until April

15, 2013 when Webb filed the motion to reopen in the reply to ASI's response.

In the April 18, 2013 order, the CALJ properly provided Webb the opportunity to supplement the motion to reopen with the proper items outlined in KRS 342.125 and 803 KAR 25:010(4)§(6). The CALJ erred in setting aside the April 18, 2013 order, and exceeded his authority in remanding the claim to the ALJ to decide issues reserved in the settlement agreement since no appeal was taken from his decision. On remand, the CALJ may entertain Webb's motion to reopen. If he determines Webb has presented a *prima facie* case for reopening, the claim may then be referred for assignment to an ALJ for resolution. The CALJ may not remand the case to the ALJ for decision of issues which may have been unresolved at the time the January 11, 2013 decision was rendered.

Regarding whether the ALJ's January 2013 opinion and order was final and appealable, 803 KAR 25:010 Sec. 21 (2)(a) provides as follows:

[w]ithin thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

803 KAR 25:010 Sec. 21 (2)(b) defines a final award, order or decision as follows: "[a]s used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2)."

Civil Rule 54.02(1) and (2) states as follows:

(1) When more than one claim for relief is presented in an action . . . the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment.

Hence, an order of an ALJ is appealable only if:

1) it terminates the action itself; 2) acts to decide all

matters litigated by the parties; and, 3) operates to determine all the rights of the parties so as to divest the ALJ of authority. Tube Turns Division vs. Logsdon, 677 S.W.2d 897 (Ky. App. 1984); *cf.* Searcy v. Three Point Coal Co., 280 Ky. 683, 134 S.W.2d 228 (1939); and Transit Authority of River City vs. Sailing, 774 S.W.2d 468 (Ky. App. 1980); *see also* Ramada Inn vs. Thomas, 892 S.W.2d 593 (Ky. 1995).

In this instance, we believe the opinion and order rendered January 11, 2013 was final and appealable. No appeal was taken from that decision and therefore the ALJ's determinations are final. While the December 2012 settlement agreement reflects the issue of entitlement to future TTD benefits was preserved, no evidence was submitted establishing entitlement to such benefits after that date. A determination of entitlement to additional TTD benefits can only be made upon evidence supporting an actual period of such disability, not at some unknown time in the future. In this instance, Webb is required to file a motion to reopen with all required attachments, present a *prima facie* case, and upon such determination, the claim may then be assigned to an ALJ for further determination. The CALJ had no authority to remand the claim to the ALJ for further determination.



Accordingly, the order entered by Hon. J. Landon Overfield, Chief Administrative Law Judge is **VACATED** and **REMANDED** for a ruling consistent with the views expressed herein. Webb's motion is **GRANTED** and this appeal is **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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